IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4186 of 1994

STATE OF RAJASTHAN
V/S
COLLECTOR, BIKANER & ANR.

Mrs. RR KANWAR & Mr. OP BOOB, A.G.A., for the appellant / petitioner

None present for the respondent

Date of Order : 7.2.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the order of the Collector (PDR) dt. 10.1.1994. The writ petition has been filed on 27.8.1994.

The facts of the case as alleged in the writ petition are, that the private respondent was granted contract for excavation work, and inadvertently a sum of Rs. 47,522/- was paid in excess to the respondent, for which respondent was not entitled, and on being requested contractor refused to return, therefore, a certificate was issued to the Collector for recovering the amount as public demand, and vide Annexure-4 the Collector closed the proceedings, on the ground, that the contract has not been executed in accordance with Article 299 of the Constitution. Challenging this order, the present writ

petition has been filed.

In paras-6 & 7 it is pleaded as under:-

> "6. That although an appeal and revision is provided under the Act, but since the order was without jurisdiction and Collector lack inherent jurisdiction in observing about the validity of agreement interpreting the Article 299 of the Constitution of India, it was futile to file appeal or revision as the controversy could not be decided by Appellate or Revisional Authority.
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> 7. That otherwise also on account of consultation with various levels i.e. from Law Department, Advocates etc. etc., much delay was caused and time in filing appeal has already expired. However, since the order being nullity in the eye of law and the controversy is regarding the interpretation of Constitutional provisions which can only be decided and interpreted by this Hon'ble Court, it was thought proper to approach this Hon'ble Court."

Then, various provisions of the Rajasthan Public Demands Recovery Act, hereafter to be referred as the Act, have been quoted, and it is prayed that the order be quashed.

Nobody appears for the respondent. However, reply had been filed on behalf of the respondent.

I have heard the learned counsel for the petitioner and have considered the material on record.

A look at Annexure-1 shows, that it is dated 6.6.78. Thus, the contract was granted in the year 1978, and the copy of the agreement and the conditions of contract have not been produced on behalf of the petitioner. Then, Annexure-2 has been produced, which is dated 1.10.1992, and from perusal thereof it transpires that thereby the certificate was forwarded to the Collector for recovery of the amount from the respondents. Then, Annexure-3 is the certificate, wherein, in column 5 it has been mentioned that the work was granted vide agreement no. 6 of 78-79, and a sum of Rs. 1,55,124/- is to be recovered. Then, in para-3 it is mentioned that the principal amount is 47522/- and 107602/- have been shown to be interest thereof. Then, in the writ petition it has not been pleaded at all, as to when the payment was made to the contractor, and when the contractor was requested to refund the amount. It is required to be grasped, that the action could be taken by the petitioner for recovery of the amount, if at all it was wrongly paid, within three years, from the date as prescribed under the Limitation Act, and obviously as pleaded in para-12 of the writ petition, the objection of limitation can be raised, if the suit were to be barred by time. In the present case there is nothing to show that the demand was within limitation. It is a different story, that in the reply it is pleaded by the respondent in para-3, that the amount was paid as back as on 5.3.80. This averment has not been controverted. Thus, the demand raised

vide Annexures 2 and 3 was obviously barred by time.

There is yet another aspect of the matter, that there may have been arbitration clause in the contract, and that remedy also could have been pursued, but that has not been pursued. I have my own doubts, as to whether the demand raised at all falls within the definition of public demand, as defined in the schedule appended to the Act. That apart even the reasoning given by the learned Collector is also not successfully shown to be wrong.

Thus, considering the case from any stand point, I do not find it to be in the interest of justice to interfere with the order Annexure-4. The writ petition is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/